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Q&A on the European Commission Decision to Exempt Deca-BDE from RoHS

The European Commission exempted the flame retardant Deca-BDE from the Restrictions on Hazardous Substances Used in Electrical and Electronic Applications (RoHS) Directive on October 15, 2005.

QUESTION: What does the Commission's Decision mean for electrical and electronic products sold in Europe?

ANSWER: Electronics manufacturers are able to continue to use the highly effective and efficient flame retardant Deca-BDE in products sold in European markets.

QUESTION: Was this exemption allowed because there are no viable alternatives for Deca-BDE?

ANSWER: When considering the exemption for Deca-BDE, the European Commission took into account the potential impact of Deca-BDE on the environment and human health, benefits to consumers, and the feasibility of replacing Deca-BDE with alternatives. The Commission recognized that alternatives to Deca-BDE exist but that, unlike Deca-BDE, none of the potential alternatives have an equivalent amount of scientific data supporting their use, nor had any of them been subject to an extensive risk assessment.

The decision to exempt Deca-BDE from the RoHS Directive was taken by the European Commission on the basis of:

- The conclusions of a European Union 10-year environmental and human health Risk Assessment, which reviewed 234 studies of Deca-BDE;
- A review of 354 additional reports on Deca-BDE completed after the risk assessment was closed in May 2004, for a total of 588 studies reviewed;
- A voluntary emissions reduction program established by Deca-BDE manufacturers and users, the Voluntary Emission Reduction Control Action Program (VECAP); and,
- The contributions from different stakeholders to a consultation that the Commission organized in July 2004, after the risk assessment was completed.

QUESTION: What kind of additional studies are required under EU Risk Assessment?

ANSWER: In May 2004, the EU Competent Authorities finalized a scientific risk assessment, covering 234 studies, with the conclusion that Deca-BDE had "no identified risks" to human health or the environment. The manufacturers of Deca-BDE and the EU Competent Authorities agreed at that time to undertake the following additional scientific studies related to Deca-BDE:

- Environment: An environmental monitoring program to monitor the presence of Deca-BDE in Europe and a voluntary emissions reduction program by Deca-BDE user industries in Europe.
- Health: An independent biomonitoring program and, as part of this program, a neurotoxicity study.

The industry voluntary emissions reduction program is well-established and the monitoring programs are currently under way and will be completed over the next 6-10 years. They will provide a thorough, unprecedented level of environmental and health information and protection.

QUESTION: What are the details of the industry's voluntary emissions reduction program?

ANSWER: The Voluntary Emission Reduction Control Action Program (VECAP) has been developed, in coordination with European risk assessment authorities, as a joint initiative between the manufacturers of Deca-BDE and the European plastics and textiles industries. A similar program is being established in North America.

The program is a cost-effective environmental management system for users of Deca-BDE and is designed to reduce emissions of Deca-BDE to the environment. It allows industry to monitor emissions to the environment and report the results to relevant authorities. More information about the program can be found at the BSEF website:
<http://www.bsef.com>.

QUESTION: Are electrical and electronics original equipment manufacturers (OEMs) required to seek alternative flame retardants, or eliminate the use of Deca-BDE through design or materials changes?

ANSWER: No. There is no EU legislation or requirement that bans or restricts the manufacturing or use of Deca-BDE, in which case there is no legal requirement for materials substitution or design changes. With Deca-BDE exempted from the RoHS Directive, there are no restrictions of any kind on the use of Deca-BDE. Further, OEMs considering alternative flame retardants will likely take into consideration the fact that Deca-BDE – for its specific applications – is the most cost-effective product and the flame retardant with the most scientific data supporting its use.

QUESTION: Is Deca-BDE different from the other exempted substances contained in the Commission Decision?

ANSWER: The exemption of Deca-BDE is subject to the same conditions as the other substances included in the Annex of the RoHS Directive.

QUESTION: Which applications of Deca-BDE are exempted from the RoHS Directive?

ANSWER: The Commission decision applies to "Deca-BDE in polymeric applications," which includes electrical and electronics applications such as plastics, rubbers, elastomers, coatings, adhesives and sealants. As such, all known applications of Deca-BDE in the electrical and electronics sector have been exempted by the Commission Decision. With this Decision, there are no bans or restrictions on the use of Deca-BDE in any product anywhere in the world.

QUESTION: Are there any "conditions" on the exemption?

ANSWER: No. The Commission decision is an unconditional exemption for all polymeric applications of Deca-BDE in electronics and electronic equipment.

QUESTION: Is this exemption final – will subsequent reviews of Deca-BDE occur?

ANSWER: The exemption for Deca-BDE has been formally adopted and has entered into legal force in the EU. The EU requires that all exempted substances be subject to a review every four years. Therefore, a review of Deca-BDE will be undertaken before 2010. In the interim, the EU Technical Committee on New and Emerging Substances will review any relevant new science that becomes available. There is no phase-out date for Deca-BDE.

QUESTION: Is there any mechanism that can be put in place before the next review that can defeat or limit this exemption?

ANSWER: No. This Decision is final, it has been adopted and it will be implemented. As noted above, the European Commission will examine emerging science and ensure that future reviews of the Deca-BDE exemption are based on scientific developments and the EU Risk Assessment.

QUESTION: Is Deca-BDE included in any other similar regulatory initiatives in other parts of the world?

ANSWER: No. There are currently no bans or restrictions on the use of Deca-BDE in any product anywhere in the world.

QUESTION: Are legal challenges to the Commission's decision to exempt Deca-BDE likely to cause the exemption to be rescinded?

ANSWER: No. The RoHS Directive, which dates from 2002, specifically made provision for Deca-BDE's potential exemption "as a matter of priority," in order to take account of the on-going EU risk assessment, and the eventual exemption was taken pursuant to the laws and regulations of the European Union and the European Commission.

Since the decision, the Parliament has filed a legal challenge, and the Danish government has taken similar action. Such challenges contradict the extensive EU science developed as part of the 10-year Deca-BDE risk assessment and are contrary to the principles of the EU chemicals policy under REACH in that these challenges, if successful, would reward the use of alternative chemicals less tested than Deca-BDE.